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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,949	02/20/2004	Anthony M. Ging	4398-286	9703

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EXAMINER

PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/781,949

Applicant(s)

GING ET AL.

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on April 3<sup>rd</sup>, 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9-19 and 22-27 is/are rejected.
- 7) ☒ Claim(s) 8,20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments, see, filed on April 3<sup>rd</sup>, 2005, with respect to claim 7 have been fully considered and are persuasive. The previous office action dating back to December 13<sup>th</sup>, 2004 has been withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1, 4 and 7, 9-12, 13-19 and 22-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle (US 3,117,574) in view of Wright (US 4,657,010).

Referring to claims **1, 12, 13 and 18**, Replogle discloses the applicant's invention as claimed with the exception of providing a yoke that comprises a first distance that is about 90-110mm, the second distance is about 80-100mm, the third distance is about 25-40mm and the fourth distance is about 45-55mm. Wright provides a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 1 and considers a matter of design

choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

**Referring to claim 4**, Replogle discloses the applicant's invention as claimed with the exception of providing a yoke that comprises a first distance that is about 100mm, the second distance is about 90mm, the third distance is about 37mm and the fourth distance is about 50mm. Wright provides a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 4 and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

**Referring to claims 7 and 14**, Replogle discloses the applicant's invention as claimed with the exception of stating that the mask can accommodate at least one of a pre-adult patient or small sized patient. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claims 7 and 14 and considers a matter of

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design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

**Referring to claims 9 and 22**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that includes an aperture having a width of between about 30-42mm, an effective height as vertically measured from an edge of the rim to a top of the cushion of about 32-42mm, and an effective bridge depth about 13-24mm as vertically measured from the membrane in the nasal bridge region to the rim. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 9, and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

**Referring to claims 10 and 23**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that has a width of about 39-40mm, a height of about 35 mm and the depth is less than about 15mm. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 10, and considers a matter of design

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choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

**Referring to claims 11 and 24**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that has a width of about 34-35mm, a height of about 40 mm and the depth is less than about 20mm. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 11, and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

**Referring to claims 15, 26 and 27**, Replogle discloses the applicant's invention as claimed with the exception of stating that the yoke is constructed and angled to accommodate a pre-adult in the age range of 2 to 6 years. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

**Referring to claims 16, 19 and 25**, Replogle discloses the applicant's invention as claimed with the exception of stating that the yoke is constructed and angled to accommodate a pre-adult in the age range of 6 to 16 years. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's

invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle US Patent No. 3,117,574 in view of Norfleet US Patent No. 6,418,929.

**Referring to claim 5**, Replogle discloses the applicant's invention as claimed with the exception of providing first and straps that are joined to one another at a rear portion of the patient's head in use via a cross over member. Norfleet discloses an infant oxygen mask that provides first and straps that are joined to one another at a rear portion of the patient's head in use via a cross over member. Therefore it would have been obvious to modify Replogle's invention by providing first and straps that are joined to one another at a rear portion of the patient's head in use via a cross over member as taught by Norfleet in order to provide a better contact between the patent and the mask.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle US Patent No. 3,117,574 in view of Anscher US Patent No. 6,000,109.

**Referring to claim 6**, Replogle discloses the applicant's invention as claimed with the exception of providing headgear that includes a clip that is made of polypropylene. Anscher discloses a buckle assembly that is made from polypropylene. Therefore it would have been obvious to modify Replogle's invention by providing clip/buckle that is made from polypropylene as taught by Anscher in order to reduce the manufacturing cost and so that it can last longer.

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*Allowable Subject Matter*

Claims 8, 20 and 21 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
June 6<sup>th</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700